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Brief of Rouse for P. C.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

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P. C.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

versus

JOHN A BUCKNER, DEFENDANT IN ERROR.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

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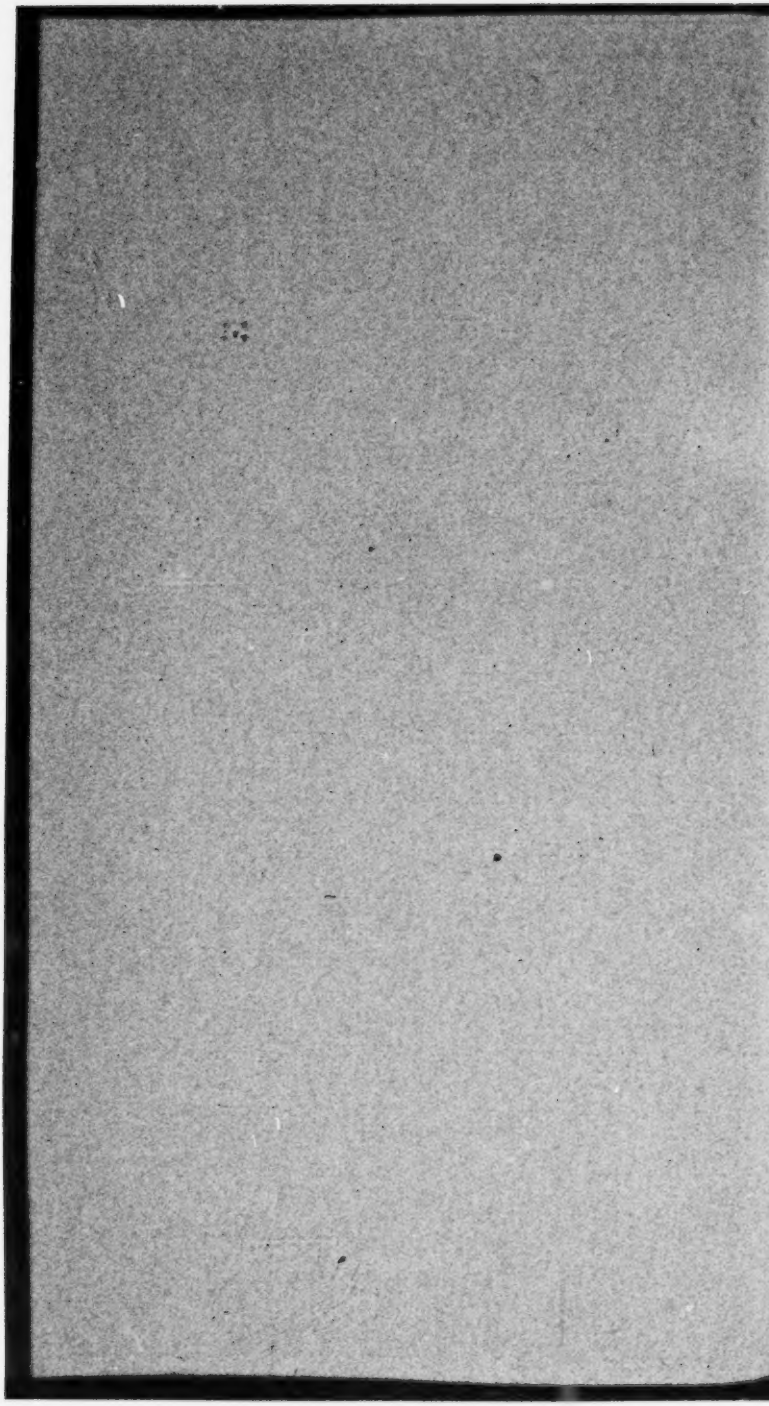

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STATEMENT.

From the statement made by the plaintiff in error in his deposition in answer to the tenth interrogatory (R., p. 15), which is undisputed, it appears that Wm. Gay, a creditor of Oliver J. Morgan, deceased, late of East Carroll parish, filed a bill in his own behalf and on behalf of other creditors in the Circuit Court of the United States against M. F. Johnson, John A. Buckner, tutor, and others. The purpose of the suit was to set aside the sales that had been made in the succession of Oliver J. Morgan on certain grounds of fraud, and to subject the property to the payment of the complainant's claim and the claims of other creditors of the succession. A decree was rendered in favor of the creditors setting aside the sales, and affirmed by this Court. The case is reported under the title of Johnson vs. Waters, 111 U. S. 640. In compliance with the mandate of this Court, W. L. McMillan was appointed receiver of all the property sold in the succession

of Oliver J. Morgan, which included the Melbourne and Morgana plantations; and upon his resignation in 1886 the plaintiff in error was appointed to succeed him, with authority to take possession of the property and lease the same (R., p. 18).

The decree of the Supreme Court (111 U. S. 675) having reserved the question whether the succession of Julia Morgan was entitled to any portion of the *proceeds* of the sale of the lands of Oliver J. Morgan donated to her, John A. Buckner in his own behalf and as tutor of Etheline Buckner, his minor child, representing the interest of Julia Morgan, filed an ancillary bill, renouncing any claim as creditor of the succession, and claiming title to Melbourne plantation under the act of donation. The Circuit Court gave Buckner and his minor child 43.35-100 of Melbourne, but on appeal this Court awarded them one-half. This allowance was made, as declared by the Court, *not as a matter of strict right*, but on purely equitable grounds. (See Mellen vs. Buckner, 139 U. S. 410.) The decree further declared that Buckner and his minor child "were to retain one-half of Melbourne in lieu of any supposed claim they might have as creditors of the succession of Morgan.

By a subsequent clause of the decree, the Court made a specific disposition of the revenues in the hands of the receiver, in the following language:

"Any moneys in the hands of the receiver, after paying his "expenses and compensation, are to be divided between the "creditors and heirs in the proportion above stated, "applying the amount due to the heirs, so far as may be "requisite, to the costs payable by them."

In obedience to this direction the Circuit Court entered a decree on the 5th of March, 1892, setting off to John A. Buckner and his minor child one-half of Melbourne plantation (R., p. 19). But neither the decree of the Supreme Court nor the decree of the Circuit Court gave them the right to the revenues of the property which accrued prior thereto. The Circuit Court, however, reserved for future adjudication

the rights of all parties concerning the disposition of the revenues that had accrued since the appointment of the receiver.

In consequence of this reservation Buckner filed a petition in the Circuit Court on the 6th day of April, 1893, praying for an account of the rents collected by the receivers for Melbourne since their appointment, and for payment of the share thereof claimed to be due him and his minor child, as half owners (R., p. 24).

The petition was referred to Wm. Grant, receiver, with directions to report the facts relative to the subject of the petition (R., p. 25).

The receiver filed the report called for, on the 5th of April, 1893, showing the revenues received from Melbourne plantation, and the disbursements made on account of taxes (R., pp. 30, 31).

This petition of Buckner is still pending and undetermined by the Circuit Court, never having been brought to a hearing by Buckner.

The receiver's accounts have been filed, showing the amounts received from rent of all the plantations and disbursed under order of Court from the date of the receivership to the date of the sale of the property, from which it appears that his disbursements exceeded his receipts by $4699.05 (R., pp. 30, 31), but that he has since been paid $1560 from the proceeds of the sale of the property, leaving a balance due him of $3139.05 (see answer to fourth cross-interrogatory, R., p. 17).

Buckner occupied the Melbourne plantation and the Morgana place during this litigation, under leases from the receiver. But after the decree of the Supreme Court was rendered in 1891 he paid no rent, and none was demanded of him, on the one-half of the Melbourne, which had been set off to him and his daughter. He paid the rent due on the other half for the year 1891, but refused to pay that due for 1892, and also refused to pay any rent for Morgana for 1891-92.

Plaintiff thereupon brought this suit for half the rent due on Melbourne for 1892, and for one-half the taxes paid on

the property for 1891-92, and for the rent of Morgana for 1891-92 (see account R., p. 8).

The answer of defendant admits that he leased Melbourne for the year 1892 at a rental of $1800, and that he owes one-half the taxes for 1891-92, which had been paid by the receiver for those years on his half, but claims that he is entitled to one-half the revenues of the plantations derived during the receivership as owner prior to 1891, under the decree of the Supreme Court of the United States, and demands judgment therefor in reconvention. He claims that he was relieved from paying rent for Morgana in 1891 on account of an overflow, and that he did not agree to pay rent for 1892 (R., p. 2).

It was conceded by the defendant in the lower Court that he owed $900 rent for one-half of Melbourne in 1892, and that he also owed $762.27 as his share of the taxes paid by the receiver on the plantation for 1891-92. As to the rent of Morgana for these years, the receiver says, in answer to the ninth interrogatory of his deposition (R., pp. 15, 16), that he leased the place in 1891-92 to Mr. Buckner by verbal agreement at an annual rental of $200, to be expended in repairs and improvements; but that Mr. Buckner neither paid the rent in cash nor expended it as agreed. Testifying on this point Mr. Buckner admits that he leased Morgana in 1891 for $200, to be paid in improvements, but says the improvements could not be made on account of an overflow that occurred. Speaking further, he says the place was partially overflowed in 1892, and that he did not collect enough rents from his tenants to repay the advances he made to them (R., p. 6).

The lower Court states in its opinion that there was no controversy as to the facts, and gave judgment in favor of plaintiff for $2070.22, for rents and taxes, and in favor of defendant for a like amount on his reconventional demand for rents claimed to be due him as owner of one-half of Melbourne plantation prior to 1891 (R., pp. 37, 38, 39).

From this judgment on the reconventional demand plaintiff in error appealed to the Supreme Court of the State of

Louisiana praying for a reversal. This was refused, and upon the application of the defendant the judgment was amended by increasing the amount awarded to Buckner to an amount equal to one-half of the whole rent collected prior to 1891, and as thus amended was affirmed (R., pp. 44–50). Upon this record the present writ of error was taken, based on the following ASSIGNMENT OF ERROR (R., p. 52):

I.

The State Court erred in permitting the defendant, John A. Buckner, to offer evidence to establish his reconventional demand against the objection of the plaintiff.

II.

Said Court erred in adjudging that the defendant, Buckner, was entitled to judgment against the plaintiff for one-half of the rents of the Melbourne plantation collected by plaintiff as receiver for the time prior to the date of the decree of the Supreme Court of the United States in the case of Mellen vs. Buckner, 139 United States, 410, when it appeared from the uncontradicted proofs that the rents collected by the receiver and those due by Buckner were not sufficient to pay the expenses of the receiver incurred in his administration, and his compensation, which by said decree were made a prior charge against said rents, thereby refusing to give proper effect to said decree.

III.

The disposition and distribution of the rents being within the exclusive jurisdiction of the Circuit Court of the United States which appointed plaintiff in error receiver, the State Court was without jurisdiction to award any part thereof to defendant on his reconventional demand, and the State Court erred in this respect.

IV.

The State Court, upon the undisputed facts in the case, erred in giving judgment in favor of the defendant on his

reconventional demand, and in reserving to him the right to recover from the receiver an additional amount on account of rents collected by the plaintiff for the use of Melbourne plantation, while it was under the plaintiff's administration.

V.

The State Court erred in requiring the plaintiff to account to such Court for the moneys in his hands collected by him as receiver under authority of the Circuit Court of the United States, which appointed him.

VI.

The State Court erred in deciding that the plaintiff, in his capacity as receiver, wrongfully collected of the defendant, rents for the whole of Melbourne plantation, while the same was in his possession and being administered by authority of the United States Circuit Court.

ARGUMENT.

The case involves, substantially, two questions of law: (1) Whether the State Court had jurisdiction to dispose of the revenues of the property in the hands of the receiver appointed by the Circuit Court of the United States; (2) Whether the State Court, if it could exercise such jurisdiction, correctly interpreted and gave proper effect to the decree and decision of this Court in the case of Mellen vs. Buckner, 139 U. S. 410, which awarded to Buckner only one-half of the revenues, after first deducting the expenses and compensation of the receiver.

I.

The suit of the receiver in this case was brought to recover rent due by Buckner for the use of Morgana plantation, in which he never had any interest, during 1891-92, and for the use of one-half of Melbourne plantation, which had been set off to the creditors of the Morgan succession, and for reimbursement of taxes paid by the receiver on Buckner's share,

accruing after he had been placed in possession. The right of the receiver to recover these items, amounting to $2070.22, as the judge of the District Court of the State declared in rendering judgment (R., p. 37), is undisputed; but against this liability to the receiver, his lessor, he claimed by a petition in reconvention that the receiver was liable to him for one-half of all rents collected by the plaintiff as well as those collected by W. L. McMillen, the prior receiver, from the date of the receivership to the time he was sent into possession of his one-half of Melbourne, early in January, 1891, without deduction of the expenses and compensation of the receiver during that period. As this claim did not in any sense grow out of the contract of lease upon which the plaintiff sued, it constituted in law a separate demand and could not be prosecuted against the receiver by a petition in reconvention unless he was suable thereon by an independent action. But we make no objection to the form of action if a State Court has jurisdiction to compel a receiver appointed by a Circuit Court of the United States to again account for a fund which he has collected and expended under direction of the Court which appointed him, as in this case.

At the trial in the State Court the plaintiff objected to the introduction of any evidence in support of the reconventional demand on the ground that exclusive jurisdiction of the subject matter of the claim in reconvention was vested in the Circuit Court, and reserved a bill to the ruling of the Court against him (R., p. 5). This was the proper course to take under the practice in Louisiana, which does not require an answer to a petition of reconvention.

Bayley & Pond vs. Stacy & Poland, 30 La. An. 1210.

The fundamental error of the State Court consisted in assuming authority to deal in any manner with a fund originally brought into the possession of the Circuit Court of the United States through its receiver, and which it had applied to the expenses of the receivership long before this suit was filed, and this in a proceeding to which Buckner was a party.

The Circuit Court of the United States having taken possession of the Melbourne plantation through its receiver, ac-

quired exclusive jurisdiction over all questions relating to its disposition, including its revenues, to the exclusion of all other courts. This rule is necessary to the administration of justice, and is recognized equally by Federal and State courts.

The rule is of universal application, that where a Federal and State Court have concurrent jurisdiction of the same subject matter, the Court which first obtains jurisdiction will retain it to the end of the controversy to the exclusion of the other.

The case of Hagan vs. Lucas, 10 Peters, 400, is an illustration of this principle. There the sheriff levied on property under a writ from the State Court, and the property was left in the custody of the defendant under a forthcoming bond, and the Federal Court held that the same property could not be levied on under a writ from the Federal Court.

And the Federal Courts have always and consistently respected the jurisdiction of the State Courts where they have acquired jurisdiction and possession of property through the appointment of receivers, and have refused to interfere with that jurisdiction.

Peale vs. Phipps, 14 Howard, 368, is a case exactly in point. In that case suit was brought in the United States Circuit Court for the Eastern District of Louisiana against a liquidator of the Agricultural Bank of Mississippi, appointed by the Circuit Court of Adams county, for mesne profits due plaintiff for property recovered from the bank. But the Court held that the Circuit Court had no jurisdiction of such a suit, as the liquidator could be sued only before the Court which appointed him and to which he was bound to account. The same rule was followed in the late case of Gellinger vs. Philipi, 133 U. S. 247, in which the Court recognized the right of our State Courts to exclusive jurisdiction in the settlement of claims against the estate of an insolvent. The question is one of comity between courts, and the universal rule is that the court which first takes cognizance of the controversy, and incidentally of the *res*, has the exclusive right to determine the litigation in all its branches. High on Receivers, Sec. 50.

Observance of this comity is necessary to the orderly ad-

ministration of justice as between the State and Federal courts having concurrent jurisdiction in the same territory. There is nothing in the present case requiring the Court to make it an exception to the general rule.

The United States Circuit Court, in a suit to which Buckner became a party, took possession of the Melbourne plantation through its receiver, who has collected the rents and expended them under its orders, as is shown by the receiver's accounts. Buckner leased the property from the receiver just as any stranger would have done, and obligated himself to pay to the Court a stipulated rental. Can he compensate the rent by setting up a claim against the Court for the income which the Court has collected and expended? It happens that he has acquired an interest in the property, but that fact gives him no more right to sue the receiver for past income in the possession of the Court than any other person would have. Such a claim does not grow out of the plaintiff's demand.

The administration of an estate through a receiver for the benefit of creditors must, upon principle, be put upon the same footing as that of the administration of successions, in which it has been held that a purchaser of property at a succession sale can not offset the price by proving that he is a creditor of the succession. His debt to the estate for the price is personal, but his claim is against the estate *in autre droit*, and cognizable only in the Court of Probates.

Gorton vs. Gorton, 12 La. 476.

Dees vs. Tilden, 2 An. 412.

Brooks vs. Walker, 3 An. 150.

Succession of Gayle, 27 An. 553.

The principle is necessarily the same where the creditor of an estate leases property from its legal representative, whether that representative be an administrator, executor, syndic or a receiver. He owes the rent as a personal obligation, which, like the property itself, or the price, belongs to the estate for the purposes of a distribution among creditors by the court having jurisdiction of the *res*. His claim against the estate, like that of all other creditors, must be placed on the account of the receiver and paid in due ceurse of law.

As to the rents due for Morgana the judgment of the District Court is manifestly correct. The defendant does not deny that he leased the property in 1891–92, at an annual rental of $200, which he was to expend in improvements. His excuse for not making the improvements is that in 1891 there was an overflow, and that in 1892 he lost more than the rent through the insolvency of his tenants. The occurrence of an overflow in 1891, as has been decided, did not excuse the payment of rent, and it does not appear that the improvements could not have been made before it came or after the water subsided, or that the overflow was such as to prevent their being made while it lasted.

But it is unnecessary to further consider the decision of the State Court as to the rental of Morgana, as the only question at issue here is the decision on the reconventional demand, the correctness of the judgment in favor of plaintiff for $2070.22, which includes the rent, being conceded.

II.

It is equally clear that the State Court erred in its interpretation of the decision of this Court, as rendered in Mellen vs. Buckner, 139 U. S. 410, even if it had jurisdiction to deal with Buckner's claim to the revenues of Melbourne plantation in the present suit.

The decision of the Supreme Court of the State is based on the mistaken theory that the award to Buckner of one-half of this plantation was a recognition by this Court of an original legal title in him to that extent, carrying with it an absolute and unqualified right to one-half of all the revenues collected by the receiver, without deducting therefrom the expense of the receivership, but we submit that such a theory finds no support in the decisions and decrees of this Court, rendered with reference to the questions here involved.

The first decree, in Johnson vs. Waters, 111 U. S. 640, annulled and set aside the title of the Kellam heirs to Melbourne plantation and ordered it sold, together with other property of Oliver J. Morgan, and the proceeds divided among his creditors. But it authorized the Kellam heirs,

now represented by Buckner, to propound before the master any claim they might have as creditors of Morgan's estate. Buckner, availing himself of this permission, presented a claim for $67,495.70, as the amount due the Kellam heirs, but at the same time filed a supplemental bill asserting title to the whole of Melbourne plantation, and averring that they were willing to abandon their claim as creditors and to accept the plantation in full satisfaction of their claim. The Circuit Court maintained the supplementary bill in part, and awarded 43 35-100 of Melbourne to the Kellam heirs, but requiring them to account for revenues. None of the parties were satisfied with the decree and the case was again appealed. One of the claims made by Buckner was that the Kellam heirs had expended large sums in restoring the plantation after frequent overflows, greatly in excess of income. After reviewing all the facts, the Court said: "In view of the conflicting evidence as to the annual value of the lands since Oliver J. Morgan's death, and the great lapse of time that has occurred, it would be difficult, if not impossible, to arrive at any precise and accurate adjustment of the equities arising out of all the complications of the case; and creditors might well say that their claims should have been satisfied when the estate was abundantly able to pay them before the restoration was necessary. The best that can be done in view of the interests of all the parties and the termination of a vexatious litigation, is to make such an award and decree as, on the whole, seems most equitable and just. With this view we see no better disposition to be made than to increase somewhat the percentage of interest in the lands to be reserved to complainants, and order a division of the lands, if they shall desire."

In conclusion the Court said: "We think it admissible, and under all the circumstances of the case would be just, to increase the interest to be reserved to the heirs of Oliver H. Kellam in the Melbourne plantation from 43 35-100 per cent. to 50 per cent. or one-half." See opinion in Mellen vs. Buckner, 139 U. S. 410.

In entering the formal decree this Court used the following

language in regard to the Kellam heirs: "It is ordered that instead of reserving to the said complainants the right to go before the master in said suit of Gay, administrator, and to prove their claims against the estate of the said Oliver J. Morgan, deceased, for any supposed indebtedness to them as heirs of Narcisse Deeson, the said claims are hereby decreed to be satisfied and paid, and that in place of said supposed claims the said heirs are entitled to have and retain a certain portion of said Oliver J. Morgan's estate free from the claims of his creditors as follows, to-wit: Two-fifths of the four plantations, Albion, Wilton, Westland and Morgana, are directed and decreed to be reserved for the benefit of the heirs of Julia Morgan, deceased; and one-half of Melbourne plantation is directed and decreed to be reserved for the benefit of the heirs of Oliver H. Kellam, Jr., and the remaining interest in the said plantations is decreed and adjudged to be subject to the payment and satisfaction of the debts due to creditors." *Ibid.* 415.

Having thus disposed of the corpus of the property of the succession with a view to a compromise and final settlement of the litigation upon purely equitable *considerations*, and without regard to strict legal titles, the Court, upon the same equitable principles, proceeded to distribute the revenues in the hands of the receiver, in the following language:

"Any moneys in the hands of the receiver, after paying "his expenses and compensation, are to be divided between "the creditors and heirs in the proportion above stated, apply-"ing the amount due to the heirs, so far as may be requisite, "to the costs payable by them."

It appears from the receiver's accounts (R., p. 30), which have been approved by the Court, and from the evidence of the receiver (R., p. 17), which is not disputed, that his salary, as fixed by the Court, and the expenses of his administration, exceeded by the sum of $4699.05 the whole amount collected by him from the revenues of the property, and that after deducting $1560 allowed him from the sale of the property set off to the creditors, there is still due him $3139.05. The fund having been more than exhausted in the

payment of these administrative charges, there was nothing due Buckner from this source, for which the State Court could give him judgment on his reconventional demand under any proper interpretation of the decision and decree of this Court, above quoted, even if it had jurisdiction to deal with the fund at all, which we deny.

Wherefore, plaintiff in error prays that the judgment of the District Court for the parish of East Carroll, in favor of the defendant on his reconventional demand, and the judgment of the Supreme Court, affirming and amending the same, be reversed and set aside, with directions to said courts to dismiss the defendant's petition of reconvention, and that he may have judgment for costs, and for such other and further relief as the nature of his case may require.

Respectfully submitted,

J. D. ROUSE,

Attorney for Plaintiff in Error.